IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1169 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CLAIMS COMMISSIONER

Versus

VASHRAMBHAI H SOLANKI

Appearance:

1. First Appeal No. 1169 of 1992

MR HM PRACHCHHAK, AGP, for Appellant No.

MR RM PARMAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 28/10/2004

ORAL JUDGEMENT

1. This First Appeal arises out of a judgment and decree rendered by the learned City Civil Judge, Court No.11, Ahmedabad, in Civil Suit No.4607 of 1983, on 25th October, 1991. The said suit was preferred by present respondent claiming compensation for injuries sustained

by him on 21st October, 1982, while in employment of the then Sahayog Mills, which came to be merged with the Ahmedabad Cotton Manufacturing Co. Ltd. The case of the respondent as plaintiff was that, while he was on duty as Boiler Attendant, he sustained injury in the form of fracture of hip joint out of accidental fall and, as he was not compensated, he preferred the suit for compensation (damages).

2. When the accident occurred, the plaintiff was in employment of Sahayog Mills, which was later on merged with the Ahmedabad Cotton Manufacturing Company Ltd. It appears that, at a later point of time, even the Ahmedabad Cotton Manufacturing Company Ltd. became a sick unit and, by virtue of the Gujarat Sick Textile Undertakings (Nationalisation) Act, 1986, the assets and liabilities of the said company were taken over by the Gujarat State Textile Corporation, and for settlement of accounts, Claims Commissioner (appellant No.1 herein) came to be appointed. The Trial Court, after considering the evidence on record, held that the plaintiff (respondent No.1 herein) is entitled to get Rs.17,450/- with interest at the rate of 12% per annum from the date of the suit till realisation of full amount with proportionate costs from present appellants, by way of compensation (damages). Aggrieved by the said judgment and decree, the present appeal is preferred by the said Claims Commissioner and the Gujarat State Textile Corporation-original defendants.

3. Heard learned Assistant Government Pleader, Mr. Prachchhak, for the appellants and learned Advocate, Mr. R.M. Parmar, for the respondent.

4. Learned Assistant Government Pleader, Mr. Prachchhak, submitted that the respondent preferred a suit instead of an application under the Workmen's Compensation Act and he claimed compensation rather than damages. Mr. Prachchhak also submitted that the Gujarat Sick Textile Undertakings (Nationalisation) Act, 1986 came into force from 1st January, 1986 and, by virtue of provisions contained in Section 5 of the said Act, decree against the appellants could not have been passed. He also contended that the Trial Court has decreed interest at 12%, which is higher than the prevailing rate of interest. Mr. Prachchhak also contended that the suit was not maintainable, which is not properly appreciated by the Trial Court. He, therefore, submitted that the appeal may be allowed.

5. On the other hand, learned Advocate, Mr. Parmar,

submitted that the Trial Court has given due consideration to the question of maintainability of the suit, in light of the legally settled propositions and, as such, rightly, the suit has been held to be maintainable. Mr. Parmar submitted that, so far as the provisions contained in Section 5 of the Act are concerned, it will not have any impact on the decree favourable to the appellant for the reason that, though the appoined date was 1st January, 1986, the liability to pay compensation crystallised only in the year 1991, when decree was passed. The liability, therefore, cannot be said to have arisen prior to 1.1.1986 and, therefore, there is no question of getting provisions of Section 5 attracted.

5.1 So far as preferring a suit for compensation rather than an application under the Workmen's Compensation Act or a suit for damages is concerned, Mr. Parmar submitted that the respondent could have chosen either of the forum and, as such, the decree cannot be said to be bad in law. Mr. Parmar submitted that there is hardly any difference between "damages" and "compensation". They can be considered to be synonymous with each other and the appeal must, therefore, be dismissed.

6. Having regard to rival side contentions, it is not in dispute that the respondent sustained accidental injuries on 21st October, 1982, while he was on duty and that no compensation was paid to him and, therefore, he preferred the suit claiming compensation. Whether it is nomenclatured as "compensation" or "damages", it should, in substance, not make any difference and the two phrases are almost synonymous. That contention of learned Assistant Government Pleader, therefore, cannot be accepted.

6.1 So far as filing a suit instead of an application for compensation under the Workmen's Compensation Act is concerned, as has rightly been held, the respondent will have a discretion to choose the forum and once that forum is chosen, the Court has undertaken an exercise and given its final verdict. It would be appropriate to note that, sub-section (5) of Section 3 of the Workmen's Compensation Act, 1923, also indicates that a suit in respect of any injury by a workman against the employer for damages can be preferred by the employee, if he so chooses, unless it falls within the criteria mentioned in clause (a) and (b). In the opinion of this Court, there is is no need for this Court to interfere with the decree on this count alone when all other counts, no merits are

found.

6.2 It is also not in dispute that, following the accidental injuries on 21st October, 1982, no compensation/damages came to be paid to the plaintiff and, as such, the suit came to be filed and decree for damages came to be passed on 25th October, 1991. The factum of the respondent's working as a Boiler Attendant with Sahayog Mills, which merged with the Ahmedabad Cotton Manufacturing Company Ltd. which, in turn, came to be taken over by appellant No.2 herein, is also not in dispute. The respondent can be said to have acquired a right for damages on the date of the accident, but the appellants denied that right to him and, therefore, the respondent was required to file a suit which came to be decreed. Therefore, the right came to be crystallised only upon passing of the decree, which came to be passed subsequent to the Act coming into force on 1.1.1986 and, as such, Section 5 of the Act cannot help the appellant in any manner.

7. In view of the above fact-situation and in view of the fact that the compensation/damages awarded by the Trial Court are not agitated on quantum aspect, the appeal must fail and the same is dismissed. The judgment and decree of the Trial Court is hereby confirmed. No costs.

[A. L. DAVE, J.]

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